



COUNTYWIDE CRIMINAL JUSTICE COORDINATION COMMITTEE

County of Los Angeles



Supervisor Yvonne B. Burke, Chair
Sheriff Leroy Baca, Vice Chair

Mark Delgado, Executive Director

August 19, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

OPPOSE PROPOSITION 5, THE NONVIOLENT OFFENDER REHABILITATION ACT (ALL DISTRICTS AFFECTED) (3 VOTES)

SUBJECT

Proposition 5, an initiative that will appear on the November 4, 2008 statewide ballot, creates a three-track drug treatment diversion system for criminal offenders and makes significant changes to California's parole policies. The Countywide Criminal Justice Coordination Committee (CCJCC) recommends that the Board of Supervisors oppose Proposition 5.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Oppose Proposition 5, the Nonviolent Offender Rehabilitation Act.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

At its July 16th meeting, CCJCC voted to recommend that your Board oppose Proposition 5.

The initiative expands eligibility for drug treatment diversion for criminal offenders, limits the availability of sanctions for non-compliance, and significantly reduces the parole supervision of certain types of offenders.

Implementation of Strategic Plan Goals

The recommended action supports Strategic Goal 4, Fiscal Responsibility, by opposing a fiscally imprudent initiative. The initiative adds a \$460 million line item to the state budget without identifying a funding source. Furthermore, according to an analysis by the State Legislative Analyst Office, Proposition 5 has an "unknown net fiscal effect on expenditures for county operations and capital outlay."

This recommended action also support Strategic Goal 8, Public Safety, by opposing changes to treatment diversion programs, drug laws, and parole policies that would negatively impact public safety.

FISCAL IMPACT/FINANCING

Proposition 5 would increase funding to the State's Substance Abuse Treatment Trust Fund from its current \$100 million allocation to \$460 million per year. The initiative adds the \$460 million line item to the state budget, plus annual adjustments for inflation, without identifying a funding source.

The County would receive funding of approximately \$19.5 million for programs targeting youth at-risk of committing future drug offenses. Funding to Los Angeles County for treatment diversion programs would increase from approximately \$33 million per year to potentially \$116 million per year. Eighty percent of the funding is dedicated for treatment and 20 percent for other program costs.

Because of the expanded eligibility pool and additional mandated court hearings under Proposition 5, this increased funding would likely not cover additional costs to the County's criminal justice system.

According to Los Angeles Superior Court staff estimates, Proposition 5 would result in approximately 28,000 additional defendants referred annually and an additional 550,000 court appearances per year. This would result in additional court costs of \$63 million, not including additional costs incurred by the District Attorney's Office, Sheriff's Department, Public Defender's Office, Alternate Public Defender's Office, and Probation Department.

The full potential fiscal impact on the County has not been determined. According to an analysis of the initiative by the State Legislative Analyst's Office, Proposition 5 would have an "unknown net fiscal effect on expenditures for county operations and capital outlay."

FACTS AND PROVISIONS

Proposition 5 was placed on the ballot by the Drug Policy Alliance, the organization which sponsored Proposition 36. Proposition 5 restructures deferred entry of judgment, Proposition 36, and drug court programs. These treatment diversion programs, which offer varying degrees of treatment and supervision to nonviolent drug offenders as an alternative to incarceration, are placed in a three-track continuum-of-care system under the initiative.

Track I is similar to the current pretrial diversion deferred entry of judgment program; Track II approximates the current Proposition 36 program; and Track III approximates current drug courts.

Proposition 5:

- expands eligibility for treatment diversion programs (non-violent, non-serious felony offenders of *non-drug* offenses may be eligible if they have a drug problem);
- permits more probation or parole violations before program termination than the current Proposition 36 system;
- adds a \$460 million line item to the State budget, plus annual adjustments for inflation, without identifying source of funds;
- does not fund drug testing;
- does not fund in-custody treatment;
- limits jail sanctions for non-compliant program participants to 10 days;
- creates numerous divisions, boards, commissions, and drug treatment reporting requirements;
- caps parole terms at six months for non-violent drug and property offenders, including dealers of less than a kilogram of drugs;
- establishes three types of parole violations – technical, misdemeanor, and felony – and prohibits certain parolees from being returned to state prison for technical or misdemeanor violations; and
- changes possession of less than 28.5 grams of marijuana from a misdemeanor to a fineable infraction.

Proposition 5 reinforces and adds to the limitations of Proposition 36 at the expense of the treatment and supervision elements incorporated in drug courts. In Los Angeles County, drug courts have a 60 percent retention rate and 29 percent five-year recidivism rate. Proposition 36 participants have a 25 percent retention rate and an unknown recidivism rate.

IMPACT ON CURRENT SERVICES

Passage of Proposition 5 would:

- result in an additional 28,000 defendants referred annually to drug treatment diversion programs;
- permit more probation or parole violations before program termination than the current Proposition 36 system;
- eliminate current Proposition 36 funding for drug testing;

- cap parole terms at six months for non-violent drug and property offenders, including dealers of less than a kilogram of drugs; and
- prohibit certain parolees from being returned to state prison for technical or misdemeanor violations.

Finally, Proposition 5 would not fund some of the drug courts that Los Angeles County has established because of their in-custody treatment components. Therefore, additional funding would have to be secured beyond Proposition 5 funding to continue Los Angeles County's current criminal justice drug treatment continuum.

CONCLUSION

Upon approval, please return two (2) copies of the adopted Board letter to Mark Delgado, Executive Director, Countywide Criminal Justice Coordination Committee.

Respectfully submitted,



MARK DELGADO
Executive Director

Attachments

c: Honorable Leroy Baca, Sheriff
Honorable Steve Cooley, District Attorney
William T Fujioka, CEO
Sachi Hamai, BOS Executive Officer
Ray Fortner, County Counsel
Jonathan E. Fielding, Dir., Dept. of Public Health
Gerri Kariya, CEO Intergovernmental Relations
Board of Supervisors Justice Deputies
Judy Hammond, CEO Public Information Officer
Wayne Sugita, ADPA – DPH



STEVE COOLEY
LOS ANGELES COUNTY DISTRICT ATTORNEY

18000 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

June 26, 2008

The Honorable Yvonne B. Burke, Chairperson
Countywide Criminal Justice Coordination Committee
866 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Chairperson Burke:

The Los Angeles County District Attorney's Office strongly opposes NORA, the Nonviolent Offender Rehabilitation Act of 2008, slated for the November 4, 2008, ballot. For the reasons stated below, we urge the CCJCC to oppose this unneeded and incredibly wasteful proposition.

While NORA promises to end the cycle of drug abuse, crime, and incarceration by adding and/or amending 47 sections of the Government, Health and Safety, Penal, and Welfare and Institutions Codes, the provisions are both vague and filled with minutiae. There is no proof that the programs proposed by NORA will be successful; but once passed, the provisions of NORA could only be changed by a four-fifths vote of the Legislature.

The provisions of NORA set the price tag for this reform at a minimum of \$2.9 billion between 2009 and 2015. For this money, the People of the State of California will receive nearly 50 new supervisory positions and two new divisions in the Department of Corrections and Rehabilitation, a 19-member "Parole Reform Oversight and Accountability Board," and a 23-member "Treatment Division Oversight and Accountability Commission."

Despite claims to the contrary, a court must grant probation to most convicted criminals if they appear "to have a problem with substance abuse or addiction." NORA clearly states that "Any defendant found eligible for treatment diversion under Track I, Track II or Track III shall be placed into appropriate treatment." A court "must rely upon the clinical assessment of the defendant" in determining appropriate treatment. (See Proposed Penal Code section 1210.02, subd. (a).)

The Honorable Yvonne B. Burke
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Convicted criminals receiving "treatment" under NORA may continue drug use without fear of incarceration. They may also qualify for housing assistance, childcare, education stipends for college or trade school, transportation to and from drug treatment, and "harm reduction therapy" aimed at teaching responsible drug use.

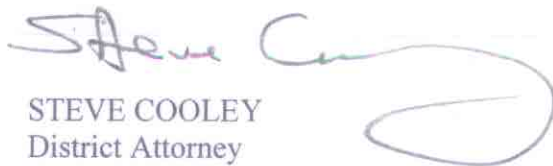
Many prison inmates, including drug dealers and thieves, will benefit from shortened parole periods, and the ability to abscond from parole, use drugs and commit misdemeanors without being sent back to prison for the violation.

Two California universities will receive at least \$29 million of NORA funds between 2009 and 2015 to study the effectiveness of the NORA provisions.

Finally, an undetermined portion of the \$2.9 billion is to be spent on an "annual international conference on the subject of prisoner and parole rehabilitation."

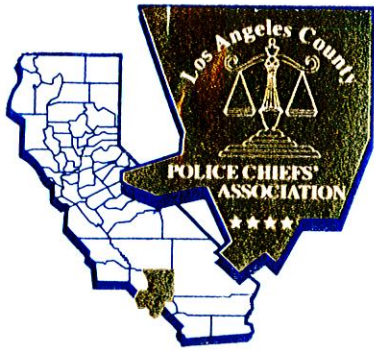
Although freeing addicts from the cycle of drug use and criminality is a laudable goal, mandating treatment for all drug users is as inappropriate as mandating prison. Current alternatives to incarceration such as Diversion, Deferred Entry of Judgment, Proposition 36 and Drug Courts successfully serve those who want to end their dependence upon controlled substances and live crime-free lives. Diverting scarce public resources from these existing programs to fund commissions, studies, boards, and conferences with no guarantee of success is not going to decrease crime in California or free people from addiction. NORA, and the billions of dollars it will divert from existing programs, is not the right solution for California.

Very truly yours,


STEVE COOLEY
District Attorney

SP/lkt

c:  Mark Delgado
Executive Director, CCJCC



Los Angeles County *POLICE CHIEFS' ASSOCIATION*

CHIEF KIM RANEY
Covina Police Department
President

July 2008

CHIEF JIM HUDSON
Alhambra Police Department
First Vice President/Secretary

Mark Delgado, Executive Director
Countywide Criminal Justice Coordination Committee (CCJCC)
County of Los Angeles
500 West Temple Street, Room 520
Los Angeles, CA 90012

CHIEF SCOTT PICKWITH
La Verne Police Department
Second Vice President

CHIEF DONALD W. PEDERSEN
Culver City Police Department
Immediate Past President

Dear Mr. Delgado:

Nothing in this state has torn more families apart than illegal drugs. The addictive nature of drugs has ensnared people from every walk of life— young, old, rich, poor, married or single; millions of people have fallen victim to the lure of drugs.

Once hooked, drug users have gone to unfathomable lengths to acquire their next high. Crimes of every type from prostitution, fraud, theft, robbery, assaults, even murder were all committed to help someone hopelessly addicted to drugs get their hands on more drugs.

For years, law enforcement tried to arrest their way out of the drug addiction problem that plagues every city in California. It clearly has not worked. Voters recognized this and frustrated with this situation passed Proposition 36 in 2000. However, Proposition 36 has been a colossal failure with more than 75% of participants going back to drugs. Prop 36 has failed because there are no meaningful sanctions for failure— a defendant can have three failures under Prop 36 before they can be held accountable. The failures of Prop 36 were tragically displayed when CHP Officer Scott Russell was murdered by a Prop 36 treatment failure.

Now the same group that brought us Prop 36, Drug Policy Alliance, is trying to push another scam, the Non-Violent Offender Rehabilitation Act (NORA). NORA takes the weakest elements of Prop 36 and aggravates them by allowing defendants to fail a minimum of five times before they can be held accountable. To make matters worse, NORA will also permit suspects who commit other crimes, even crimes against others, to evade responsibility for those crimes if they claim “the drugs made me do it.” Once an offender makes this assertion, the burden of proof is on the prosecution to show why the defendant should not be admitted into the program. This non-accountability will create a revolving door of offenders who blame their behavior on drugs.

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There are many other destructive provisions in NORA including:

- Providing drug dealers with “preferred parole,” meaning most drug dealers will be off parole in six months after leaving prison.
- Reducing the penalty for possession of an ounce of marijuana to an infraction – the equivalent of a traffic ticket that doesn’t carry a criminal record, giving the user even less incentive to enter drug treatment.

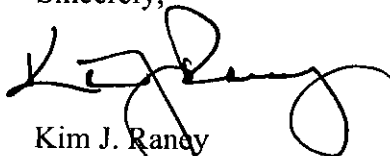
Recently, the National Association of Drug Court Professionals voiced their opposition to NORA stating; “NORA advances a number of politically controversial positions. These include the explicit decriminalization of marijuana possession...” and “NORA fails to learn many of the lessons of Proposition 36 regarding the importance of holding offenders meaningfully accountable for their actions...”

The bottom line is that NORA looks to finish what Prop 36 started—the decriminalization of drugs. NORA further weakens the penalty for drug users and dealers and weakens the incentive for any user to get the help the Drug Policy Alliance claims they want for drug users. In essence, NORA gives drug users no hope, only more second chances that keep the revolving door of drug use, and crimes that go with it, going.

Addicts must have an incentive to leave the hopeless lifestyle behind and most often, only the threat of incarceration is the incentive necessary to participate and stay away from drugs. In essence, treatment is the hope and incarceration is the hammer. And without the hammer, there can be no hope for addicts.

Keep this in mind when the Drug Policy Alliance begins to flood the airwaves and newspapers with promises of more chances, when in reality they are using people in the most vulnerable of positions, those hopelessly addicted to drugs, to push their own agenda of drug decriminalization.

Sincerely,



Kim J. Raney
Chief of Police/City of Covina
President/Los Angeles County Police Chiefs’ Association